SUHAILI BIN HAJI CHUCHU v. PUBLIC PROSECUTOR (NO. 2)

[A.Cr.J. (Huggins C.) May 25, 1982]

[Bandar Seri Begawan – Criminal Appeal No. 7 of 1982]

Criminal Law & Procedure – Application for stay of execution pending appeal need not be made on date sentence was passed – Criminal Procedure Code (Brunei), s. 279.

The present application arose out of the dismissal of the appellant's application for a stay of execution pending appeal.

Section 279 of the Criminal Procedure Code permits a stay of execution pending appeal. Such stay may be granted upon application either to the court passing the sentence or the court to which the appeal lies or to the Chief Justice.

The learned Magistrate took the view that application to the court passing the sentence could be made only on the date on which sentence was passed.

Held, allowing the appeal: section 279 permits an application for stay of execution to be made at any time before an appeal is heard, and it does not have to be made on the date sentence is passed.

CRIMINAL APPEAL.

Alli Kawi for the appellant.

James Chiew Siew Hua (Deputy Public Prosecutor) for the respondent.

Huggins C.: The present application arises out of a case which came before me the other day on appeal. Counsel drew my attention to the fact that the learned Magistrate had dismissed an application for a stay for execution pending appeal. I have had today the advantage of hearing counsel for the Appellant and of counsel on behalf of the State.

Section 279 of the Criminal Procedure Code permits a stay of execution pending appeal. Such stay may be granted upon application either to the court passing the sentence or the court to which the appeal lies or to the Chief Justice. The learned Magistrate took the view that application to the court passing the sentence could be made only on the date on which sentence was passed. With respect I do not agree.

The court passing the sentence, in the present case, was the Magistrates' Court. The application did not have to be made even to the same magistrate, provided that it was made to the Magistrates' Court. Moreover, the purpose of this section is to provide for a stay pending appeal. Until it has been decided to appeal, there is no pending appeal. The section imposes no time limit. Therefore, in my view, the section permits an application to be made at any time before an appeal is heard, and it does not have to be made on the date that sentence is passed.

Order accordingly.

Solicitors: *Alli Kawi & Co.*